Filed 6/5/17 NWHC, Inc. v. City of Bellflower CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

NWHC, INC., Plaintiff, Cross-defendant and Appellant, v. CITY OF BELLFLOWER, Defendant, Cross-complainant and Respondent.	B271590 (Los Angeles County Super. Ct. No. VC065128) ORDER MODIFYING OPINION

THE COURT:

It is ordered that the opinion filed herein on May 22, 2017 be modified as follows:

Counsel listing for appellant shall be corrected to read: Peirano & Associates, Cristian L. Peirano and Sean Raymond Bozarth for Plaintiff, Cross-defendant and Appellant.

There is no change in the judgment.

PERLUSS, P .J. SEGAL, J. SMALL, J. (Assigned)

Filed 5/22/17 NWHC, Inc. v. City of Bellflower CA2/7 (unmodified version)

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NWHC, INC., Plaintiff, Cross-defendant and Appellant, v. CITY OF BELLFLOWER, Defendant, Cross-complainant and Respondent.	B271590 (Los Angeles County Super. Ct. No. VC065128)

APPEAL from an order of the Superior Court of Los Angeles County, Margaret Miller Bernal, Judge. Affirmed.

Peirano & Associates, Christian L. Peirano and Sean Raymond Bozarth for Plaintiff and Appellant.

Dapeer, Rosenblit & Litvak, William Litvak and Caroline K. Castillo for Defendant and Respondent City of Bellflower.

NWHC, Inc., a California corporation doing business as Bellflower Cannabis Garden, operated a medical marijuana dispensary in the City of Bellflower from October 2015 until the superior court granted the City's motion for a preliminary injunction barring its operation in April 2016. NWHC contends its dispensary was a permitted use under the City's municipal code or, alternatively, provisions of the code relied on by the City were preempted or unconstitutionally applied. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2015 NWHC President Sean Morales submitted an application for a business license to the City to operate a retail/convenience store under the name Bellflower Cannabis Garden. When asked, Morales told the City employee behind the counter the business would be selling medical marijuana. The employee told Morales the City did not issue licenses for medical marijuana and declined to accept any fee to process the license. Morales left the application at the counter.

Bellflower Cannabis Garden opened for business without a license from the City. On October 16, 2015 City inspectors visited the dispensary and confirmed it was selling medical marijuana. On October 26, 2015 the City sent a cease-and-desist letter to NWHC stating that a medical marijuana dispensary was not a permitted use under the Bellflower Municipal Code (BMC) citing two provisions: 1) BMC section 17.04.100, which bars any new use "unless it is permitted by both State and Federal law"; and 2) BMC section 17.44.020, which lists the uses allowed within the general commercial zoning district. A medical marijuana dispensary is not an enumerated use.

On November 5, 2015 NWHC filed this lawsuit seeking declaratory and injunctive relief against the City's attempt to

enforce these provisions of the BMC, alleging the dispensary was a permitted use as a drugstore, dry goods store or grocery. NWHC also sought a writ of mandate forcing the City to issue a business license for Bellflower Cannabis Garden and nominal and punitive damages for the arbitrary actions of the City in refusing to process NWHC's application for a business license in violation of article I, section 7, of the California Constitution.

In December 2015 the City began proceedings to adopt an ordinance adding section 17.04.110 to the BMC, banning "commercial cannabis activities" in all zones and specific plan areas within the City and prohibiting the issuance of any "use permit, variance, building permit, or any other entitlement, license, or permit" for such activity. The ordinance was adopted and became effective on January 25, 2016.

On February 15, 2016 the City filed a cross-complaint alleging NWHC had violated the BMC by operating without a business license and operation of a marijuana dispensary constituted a public nuisance. The next day the City moved for a preliminary injunction on those grounds. On March 2, 2016 the City sent a letter to Morales enclosing a copy of the incomplete business license application he had attempted to file in October 2015 and the accompanying incomplete zoning clearance form. The letter advised Morales NWHC must complete the forms and pay the application fee if it wished to proceed with its effort to obtain a business license. NWHC never completed an application.

The City's motion for a preliminary injunction against the operation of the dispensary was granted by the superior court on April 1, 2016. The court stayed the order to allow NWHC to seek a writ of supersedeas from this court. We denied the petition on

April 20, 2016, and Bellflower Cannabis Garden terminated operations soon thereafter.

CONTENTIONS

NWHC contends the City may not rely on federal law to justify banning medical marijuana dispensaries and the superior court lacked subject matter jurisdiction to enter an injunction on that ground. Further, according to NWHC, the City incorporated state law permitting the operation of medical marijuana dispensaries into the BMC and is thus bound by those state law provisions. NWHC also argues its dispensary was a permitted use under the BMC.

NWHC also attacks the City's business licensing scheme as an unconstitutional prior restraint and claims it may not use its own failure to process NWHC's requested license as "a regulatory means" to challenge the dispensary's legality. Moreover, by purposefully blocking NWHC from obtaining a business license, the City was precluded from obtaining any equitable relief by the doctrine of unclean hands.

DISCUSSION

1. *Standard of Review*

In determining whether to issue a preliminary injunction a trial court weighs two interrelated factors: "[T]he likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999; accord, *White v. Davis* (2003) 30 Cal.4th 528, 554; *City of Corona v. AMG Outdoor Advertising, Inc.* (2016) 244 Cal.App.4th 291, 298.) When a governmental entity seeks to enjoin illegal activity under an ordinance or law specifically

providing for injunctive relief and has successfully shown it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the opposing party. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-73; *People ex rel. Feuer v. FXS Management, Inc.* (2016) 2 Cal.App.5th 1154, 1158-1159 (*FXS Management*); *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1166 (*Kruse*).)

Generally, the trial court's ruling on an application for a preliminary injunction rests in its sound discretion and will not be disturbed on appeal absent an abuse of discretion. (*City of Corona v. AMG Outdoor Advertising, Inc., supra,* 244 Cal.App.4th at p. 298; *SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280-281.) Notwithstanding this general standard of review, the specific determinations underlying the superior court's decision are subject to appellate scrutiny under the standard of review appropriate to that type of determination. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1136-1137; accord, *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 739.) Thus, the superior court's express and implied findings of fact must be accepted by the appellate court if supported by substantial evidence, and its conclusions on issues of pure law are subject to independent review. (*FXS Management, supra,* 2 Cal.App.5th at pp. 1158-1159; *420 Caregivers, LLC v. City of Los Angeles* (2012) 219 Cal.App.4th 1316, 1331.)

The party challenging the preliminary injunction has the burden of demonstrating it was improperly granted. (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 306; *Smith v. Adventist Health System/West, supra,*

182 Cal.App.4th at p. 739.) The reviewing court is required to presume the trial court's judgment or order is correct and draw all inferences in favor of the trial court's decision. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) When, as here, "there is no indication of the trial court's rationale for [its ruling], the court's decision will be upheld on appeal if reasonable justification for it can be found. 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion."'" (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443; accord, *Smith*, at p. 739; see *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1451 ["[f]or purposes of appellate review, we therefore presume the court considered every pertinent argument and resolved each one consistently with its minute order denying the preliminary injunction"].)

2. *The Superior Court Did Not Abuse Its Discretion in Granting the Preliminary Injunction*

a. *The authority of local jurisdictions to regulate the sale of medical marijuana*

At the time of these proceedings,[1] marijuana use by "seriously ill Californians" was decriminalized if "recommended by a physician," under the Compassionate Use Act (CUA). (Health & Saf. Code, § 11362.5, subds. (b)(1)(A), (d).) The 2003 Medical Marijuana Program Act (*id.,* § 11362.7 et seq.) (MMPA) enhanced

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[1] Although California voters adopted Proposition 64 on November 8, 2016, legalizing recreational use of marijuana by adults aged 21 years or older, it was not in effect at the time the instant preliminary injunction was entered and does not affect our analysis.

the access of qualified patients to medical marijuana. (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 739 (*Riverside*).) These state laws have no effect on federal law, which prohibits the possession, distribution or production of marijuana, including marijuana used for medical conditions. (*Id.* at p. 740 [discussing Controlled Substances Act (21 U.S.C. § 841(a)(1)) (CSA)]; see *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 490 [121 S.Ct. 1711, 149 L.Ed.2d 722]; see also *Gonzales v. Raich* (2005) 545 U.S. 1, 32 [125 S.Ct. 2195, 162 L.Ed.2d 1].)

Although the CUA and MMPA allow the use of marijuana by seriously ill persons, those laws do not prevent local authorities from exercising their police power by enacting ordinances that bar the operation of medical marijuana dispensaries within their borders. (*Riverside*, *supra*, 56 Cal.4th at pp. 738, 752; *Kruse*, *supra,* 177 Cal.App.4th at p. 1176.) Specifically, "the CUA and the MMP, by their substantive terms, grant limited exemptions from certain *state* criminal and nuisance laws, but they do not expressly or impliedly *restrict* the authority of local jurisdictions to decide whether local land may be used to operate medical marijuana facilities." (*Riverside*, at p. 752, fn. 8.)[2]

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[2] The same analysis applies to the 2015 enactment of the Medical Marijuana Regulation and Safety Act (MMRSA), which, among other things, creates a state licensing scheme for the cultivation, distribution and transportation of medical marijuana. (Bus. & Prof. Code, § 19300 et seq., added by Stats. 2015, ch. 689, § 4.) MMRSA states that nothing in its regulatory scheme "shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements." (Bus. & Prof. Code, § 19315,

b. *A city's authority to declare a public nuisance and move to abate it*

A city is constitutionally authorized to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) As acknowledged by the Supreme Court in *Riverside*, municipalities have the authority to prohibit the distribution of medical marijuana within their jurisdictions "by declaring such conduct on local land to be a nuisance, and by providing means for its abatement."[3] (*Riverside, supra,* 56 Cal.4th at p. 762; accord, *FXS Management*, *supra*, 2 Cal.App.5th at pp. 1160-1161.) Government Code section 38771 expressly authorizes a city legislative body to declare by ordinance what it deems to constitute a nuisance. A public nuisance is "one which affects at the same time an entire community or neighborhood, or any considerable number of persons . . . ." (Civ. Code, § 3480; see *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1086 (*Carrnshimba*); *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 244.)

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subd. (a); see *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1049-1050 [rejecting argument MMRSA preempted Los Angeles's efforts to regulate medical marijuana distribution].)

[3] Based on this express statement by the Supreme Court in *Riverside,* we reject NWHC's contention that provisions of the CUA and MMPA exempt medical marijuana dispensaries from local nuisance provisions. (See *Riverside, supra,* 56 Cal.4th at p. 737 ["The issue in this case is whether California's medical marijuana statutes preempt a local ban on facilities that distribute medical marijuana. We conclude they do not."].)

An act or condition legislatively declared to be a public nuisance is "'"a nuisance per se against which an injunction may issue without allegation or proof of irreparable injury."'" (*Carrnshimba, supra,* 215 Cal.App.4th at p. 1086; see *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1206 ["a nuisance per se arises when a legislative body with appropriate jurisdiction, in the exercise of the police power, expressly declares a particular object or substance, activity, or circumstance, to be a nuisance"]; *City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 382 ["'[n]uisances *per se* are so regarded because no proof is required, beyond the actual fact of their existence, to establish the nuisance'"].) "Thus, the only issues for the court's resolution in a nuisance per se proceeding are whether the statutory violation occurred and whether the statute is constitutional." (*Carrnshimba*, at p. 1087.)

c. *NWHC's operation of a medical marijuana dispensary was not a permitted use under the BMC*

BMC section 1.08.020 states: "[A]ny condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be summarily abated by the City." (See also BMC, § 8.36.020 [defining "public nuisance" to include "[a]ll conditions . . . that otherwise violate or are contrary to any provision of the [BMC]" and "an activity on, or use of, real property [that] violates, or is contrary to, any provision or requirement of the [BMC]"].) NWHC's operation of a medical marijuana dispensary constituted an abatable public nuisance per se because a medical marijuana dispensary was not an approved use under the BMC and NWHC failed to obtain the necessary approval to operate within the city.

BMC section 5.04.050 makes it unlawful for any person to operate a business in Bellflower without first having procured a license from the City to do so. In October 2015, when NWHC first sought a business license for its medical marijuana dispensary, the BMC did not expressly prohibit such uses within the general commercial district but was explicit about which uses were permitted.[4] BMC Section 17.44.020(A) provides "[t]he following uses only shall be permitted in the C-G, General Commercial District unless as otherwise provided for in this title" and lists 116 uses. Section 17.44.020(C) allows uses "substantially similar" to those listed in section 17.44.020(A), but requires the planning commission "to review and determine that the possible use is substantially similar to a use permitted by this section." BMC section 17.44.030 lists an additional 67 uses not specified in section 17.44.020(A), but requires the business owner to obtain a valid conditional use permit approved by the planning commission.

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[4] As a threshold limitation BMC section 17.04.100 provides, "Notwithstanding any other provision of this title, no new use is permitted unless it is permitted by both State and Federal law." The City asserted this provision as one of its grounds for seeking the preliminary injunction. NWHC contends this argument constituted an impermissible attempt to enforce federal law. (See *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, 380 ["[W]e think judicial enforcement of federal drug policy is precluded in this case because the act in question—possession of medical marijuana—does not constitute an offense against the laws of both the state and the federal government. Because the act is strictly a federal offense, the state has "no power to punish [it] *as such*."].) While we are not convinced by NWHC's argument, we need not address it in light of our conclusion the dispensary was not a permitted use under the BMC.

Considering a similarly constructed municipal regulatory scheme, the *Carrnshimba* court observed that "[s]uch a regulatory scheme would be pointless unless it were construed as defining permitted commercial uses of property . . . with the corollary that unlisted commercial uses that cannot reasonably be included in any listed use classification are not permitted." (*Carrnshimba*, *supra*, 215 Cal.App.4th at p. 1091; see *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431 [upholding issuance of preliminary injunction because municipal code did not provide for medical marijuana dispensaries as an enumerated use]; *Kruse, supra*, 177 Cal.App.4th at p. 1158 [same].)

Notwithstanding this authority, NWHC argues its dispensary was a permitted use under the BMC for two reasons. First, according to NWHC, the BMC proscribes uses of particular premises and not the individual goods sold at the premises. Medical marijuana, it reasons, is simply a good that may be sold at retail stores. The fallacy of this argument is revealed by the lack of enumerated categories for "retail" or "convenience" stores—the categories identified in NWHC's application for a business license. Instead, the BMC lists specific categories of retail uses, such as antique store, bicycle shop, camera shop, department store or sporting goods store. Medical marijuana dispensary is not listed as a permitted use.

Second, NWHC urges its dispensary was a permitted use under the enumerated categories of "drugstore, including pharmacy," "dry goods store" and "grocery, including produce, meat, and general merchandise store (indoor)." (BMC, § 17.44.020(A).) *Carrnshimba* expressly rejected the argument a dispensary qualified as a pharmacy, which is defined in the Business and Professions Code as "an area, place, or premises

licensed by the [State Board of Pharmacy] in which the profession of pharmacy is practiced and where prescriptions are compounded. 'Pharmacy' includes, but is not limited to, any area, place, or premises described in a license issued by the [State Board of Pharmacy] wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail." (Bus. & Prof. Code, § 4037, subd. (a); see *Carrnshimba*, *supra,* 215 Cal.App.4th at p. 1093.)

As *Carrnshimba* recognized, prescriptions are not required for the purchase of marijuana; and dispensaries are not licensed by the State Board of Pharmacy. (*Carrnshimba, supra,* 215 Cal.App.4th at p. 1094.) Moreover, the City points out, the terms "drugstore" and "pharmacy" are frequently used interchangeably. (See Bus. & Prof., § 4037 [because pharmaceutical profession is practiced in a drugstore, a drugstore is a location from which "controlled substances, dangerous drugs . . . are furnished, sold, or dispensed"]; 10 Ops. Cal.Atty.Gen. 85, 86 (1947) ["'pharmacy' is synonymous with drugstore and apothecary"].) NWHC has failed to cite any case concluding a medical marijuana dispensary use is equivalent to a retail drugstore use; and, indeed, the Business and Professions Code separately defines "dispensary" to mean "a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale . . . ." (Bus. & Prof. Code, § 19300.5, subd. (n).) Clearly, the Legislature has

recognized a distinction between a drugstore/pharmacy and a dispensary. The BMC permits the former, not the latter.

NWHC alternatively claims a dispensary falls within the category of "dry goods store" because medical marijuana is sold in a dried form. This argument is belied by the consistent definition of dry goods in commonly used American dictionaries as consisting of textiles and household cloth-based items. (See, e.g., Merriam-Webster Dictionary ["textiles, ready-to-wear clothing, and notions as distinguished especially from hardware and groceries"] <http://www.merriam-webster.com/dictionary/dry%20goods> as of May 22, 2017; Random House Kernerman Webster's College Dictionary (2010) ["textile fabrics and related merchandise, as distinguished esp. from groceries and hardware"] <http://www.thefreedictionary.com/ dry+goods> as of May 22, 2017.)[5]

NWHC's assertion the dispensary qualifies under the category of grocery store (defined as selling produce, meat, and general merchandise) is equally flawed. The same dictionaries define grocery as "a store that sells food and household supplies" (Merriam-Webster Dictionary, *supra,* <http://www.merriam-webster.com/dictionary/grocery%20store> as of May 22, 2017, or, reduntantly, as "a grocer's store" or "food and other commodities sold by a grocer" (Random House Kernerman Webster's College Dictionary, *supra,* <http://www.thefreedictionary.com/grocery> as of May 22, 2017.) Medical marijuana is not a commodity sold at grocery stores in California.

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[5] NWHC's argument that British dictionaries define dry goods to mean items such as tea, coffee and flour does not aid our construction of the BMC.

In short, a dispensary at best qualifies as a use similar to these categories, which should have prompted NWHC to seek approval for its dispensary from the Bellflower Planning Commission, as permitted by BMC section 17.44020(C). NWHC's failure to do so confirms it knew the City construed its code not to authorize medical marijuana dispensaries, as it was advised in October 2015 when Morales presented NWHC's application for a business license. (See *Carrnshimba*, *supra*, 215 Cal.App.4th at p. 1087 [""""the contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized""""].)

In sum, the superior court did not err in concluding the dispensary was not a permitted use under the BMC and thus constituted a public nuisance per se subject to abatement through the issuance of a preliminary injunction.

3. *NWHC's Defenses Are Unmeritorious*

a. *The City's regulatory scheme was not an unconstitutional prior restraint*

Even if the dispensary is not a permitted use under the BMC, and thus its operation a public nuisance per se, NWHC asserts the City's regulatory scheme constituted an unconstitutional prior restraint. (See *Carrnshimba*, *supra,* 215 Cal.App.4th at p. 1087 ["the only issues for the court's resolution in a nuisance per se proceeding are whether the statutory violation occurred and whether the statute is constitutional"].) In particular, NWHC points to the City's failure to fix a time limit to make a determination on a business license application. NWHC contends the City's nearly six-month

delay in processing its application was "a quintessential prior restraint" and asserts "'[a]ny system of prior restraint . . . "comes . . . bearing a heavy presumption against its constitutional validity,"'" quoting *Tily B., Inc. v. City of Newport Beach* (1998) 69 Cal.App.4th 1, 10. In *Tily B.* an adult entertainment establishment sought to compel the City of Newport Beach to issue use permits, challenging the constitutionality of an ordinance prohibiting nude dancing. The limited question on appeal was whether "[g]iving an administrator unbridled discretion to issue a permit for a sexually oriented business is an unconstitutional restraint on speech." (*Id.* at p. 25.)

Unlike the erotic dancing at issue in *Tily B.*, there is no expressive activity of any sort at issue in this case; and NWHC's argument lacks theoretical and factual coherence. Morales did not appear to believe he had submitted an application until the City acknowledged it had the incomplete draft form and invited NWHC to complete the application. Indeed, Morales had already been told the application would not be accepted and was never asked to pay the required application fee. As he correctly understood, this was not a delay in processing, but rather a straightforward rejection of the application.

Moreover, there is no evidence NWHC attempted to appeal the clerk's refusal to accept the application, as contemplated by BMC section 5.04.160, which provides, "Within 10 days of the City's refusal to issue a business license, an applicant may appeal the refusal to the city council." NWHC knew it was operating without a business license, as well as the reason for the rejection of its application. In fact, the City has argued that NWHC's failure to exhaust its administrative remedies is another ground justifying issuance of the preliminary injunction. Although

NWHC correctly points out the City did not argue exhaustion to the superior court, there is no dispute NWHC chose to open the dispensary without a business license rather than seek City review of the clerk's rejection of its application and thus forfeited any administrative review of that action.

b. *NWHC's defense of unclean hands is equally misconceived*

The defense of unclean hands arises from the maxim, "'"He who comes into Equity must come with clean hands."'" (*Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1059; accord, *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) "The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson,* at p. 978, citing *Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.* (1945) 324 U.S. 806, 814-815 [65 S.Ct. 993, 89 L.Ed. 1381].) Whether the doctrine of unclean hands applies is a question of fact. (*Kendall-Jackson,* at p. 979; *CrossTalk Productions*, *Inc. v. Jacobson* (1998) 65 Cal.App.4th 631, 639.)

However clumsy the City's handling of NWHC's application for a business license, NWHC—by choosing to operate without a license—violated the BMC. This evidence, standing alone, was sufficient to deny the asserted defense of unclean hands. Although the order issued by the court is silent on this point, we must infer the court considered NWHC's argument and rejected it. Again, by forgoing administrative review of the rejection, NWHC forfeited its assertion the City acted improperly.

DISPOSITION

The order granting the preliminary injunction is affirmed. The City of Bellflower is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

SMALL, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.